

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BRAIDWOOD MANAGEMENT INC.,
et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity
as Secretary of Health and Human
Services, et al.,

Defendants.

Case No. 4:20-cv-00283-O

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*
AMERICAN MEDICAL ASSOCIATION, AMERICAN COLLEGE OF
OBSTETRICIANS AND GYNECOLOGISTS, SOCIETY FOR MATERNAL-FETAL
MEDICINE, AMERICAN ACADEMY OF PEDIATRICS, AMERICAN MEDICAL
WOMEN'S ASSOCIATION, AMERICAN ACADEMY OF FAMILY PHYSICIANS,
NATIONAL MEDICAL ASSOCIATION, AND INFECTIOUS DISEASES SOCIETY OF
AMERICA IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND FOR LEAVE TO PROCEED WITHOUT LOCAL COUNSEL**

Pursuant to Local Civil Rule 7.2(b), proposed *amici curiae* move for leave to file the attached amicus brief in opposition to Plaintiffs' motion for a temporary restraining order and preliminary injunction. *Amici* also request leave to proceed without local counsel pursuant to Local Civil Rule 83.10(a). Counsel for Defendants represented that they consent to these motions, and counsel for Plaintiffs represented that they are unopposed.

INTERESTS AND IDENTITY OF *AMICI*

Amici are medical associations and societies that represent practicing physicians who provide vital preventive health care services to millions of patients. Specifically, *amici* include:

The **American Medical Association** is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty

medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA's policy-making process. Founded in 1847, the AMA promotes the art and science of medicine and the betterment of public health, and these remain its core purposes. The AMA's members practice in every medical specialty and in every state. The AMA joins this brief on its own behalf and as a representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

The **American College of Obstetricians and Gynecologists** is the nation's leading group of physicians providing health care for women. With more than 62,000 members, ACOG advocates for quality health care for women, maintains the highest standards of clinical practice and continuing education of its members, and is committed to ensuring access to the full spectrum of evidence-based quality reproductive health care, including abortion care. ACOG's briefs and medical practice guidelines have been cited by numerous authorities, including the U.S. Supreme Court, as a leading provider of authoritative scientific data regarding childbirth and abortion.

The **Society for Maternal-Fetal Medicine**, founded in 1977, is the medical professional society for maternal-fetal medicine subspecialists, who are obstetricians with additional training in high-risk pregnancies. SMFM represents more than 5,500 members, including 442 in Texas, who care for high-risk pregnant people and provides education, promotes research, and engages in advocacy to advance optimal and equitable perinatal outcomes for all people who desire and

experience pregnancy. SMFM and its members are dedicated to ensuring patients have access to preventive health care services to keep them healthy before, during, and after pregnancy.

The **American Academy of Pediatrics** was founded in 1930 and is a national, not-for-profit professional organization dedicated to furthering the interests of child and adolescent health. Since AAP's inception, its membership has grown from 60 physicians to over 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists. Over the past 90 years, AAP has become a powerful voice for child and adolescent health through education, research, advocacy, and the provision of expert advice. Among other things, AAP has worked with the federal and state governments, health care providers, and parents on behalf of America's children and adolescents to ensure the availability of effective preventive services.

The **American Medical Women's Association** is the oldest multi-specialty organization for women in medicine. Founded in 1915, AMWA's mission is to advance women in medicine, advocate for equity, and ensure excellence in health care. This is achieved by providing and developing programs in advocacy, leadership, education, and mentoring. AMWA and its members are dedicated to ensuring excellence in clinical care for all Americans.

Founded in 1947, the **American Academy of Family Physicians** is one of the largest national medical organizations, representing 127,600 family physicians and medical students nationwide. AAFP seeks to improve the health of patients, families, and communities by advocating for the health of the public and by supporting its members in providing continuous comprehensive health care to all.

The **National Medical Association** is the collective voice of African American physicians and the leading force for parity and justice in medicine and the elimination of

disparities in health. The NMA is the largest and oldest national organization representing African American physicians (over 50,000) and their patients in the United States. NMA is committed to improving the quality of health among minorities and disadvantaged people through its membership, professional development, community health education, advocacy, research and partnerships with federal and private agencies. Throughout its history the National Medical Association has focused primarily on health issues related to African Americans and medically underserved populations; however, its principles, goals, initiatives, and philosophy encompass all ethnic groups.

The **Infectious Diseases Society of America** is a community of over 12,000 physicians, scientists, and public health experts who specialize in infectious diseases. Our purpose is to improve the health of individuals, communities, and society by promoting excellence in patient care, education, research, public health, and prevention relating to infectious diseases.

ARGUMENT

Collectively, *amici* represent hundreds of thousands of American physicians and other health professionals, including thousands of physicians in Texas. *Amici* submit the attached brief to express their concern that a nationwide remedy gutting the Affordable Care Act's preventive-care requirements could significantly jeopardize the coverage of preventive health care services for millions of Americans and reverse positive trends in patient health achieved by the early detection and treatment of diseases and other medical conditions. As professional organizations representing physicians across the country, *amici* know the value of preventive care services, ranging from colonoscopies and mammograms to weight loss and smoking cessation programs, in helping their patients to live long, healthy lives. *Amici* therefore seek to file this brief to provide a medical perspective on the issues in this case, with a specific focus on the importance of eliminating financial barriers to accessing preventive care.

Whether to grant a motion for leave to participate as *amicus curiae* is within the Court's discretion. *Richardson v. Flores*, 979 F.3d 1102, 1106 (5th Cir. 2020); *see also, e.g., United States v. Gozes-Wagner*, 977 F.3d 323, 345 (5th Cir. 2020) (noting court's "broad discretion" to consider "amici's additional arguments"). In deciding whether to grant leave, courts generally consider whether "the proffered information is timely and useful or otherwise necessary to the administration of justice." *United States ex rel. Long v. GSD & M Idea City LLC*, No. 11-cv-1154, 2014 WL 11321670, at *4 (N.D. Tex. Aug. 8, 2014) (O'Connor, J.) (quoting *Does 1-7 v. Round Rock Indep. Sch. Dist.*, 540 F. Supp. 2d 735, 739 n.2 (W.D. Tex. 2007)).

The Court should grant *amici*'s motion for leave because the proposed brief is timely and useful. **First**, it is timely because it is filed "no later than 7 days after the principal brief of the party being supported is filed" concerning the issue of remedy. Fed. R. App. P. 29(a)(6). It is also filed prior to the deadline for the opposing parties' reply brief and, as noted above, the opposing parties have indicated that they either consent to or do not oppose its filing.

Second, the brief may be useful to the Court because it provides scientific and medical information not present in the parties' briefs. Specifically, it provides a physician's perspective on the importance of preventive care, how financial barriers can discourage the use of preventive care, how the ACA substantially alleviated those barriers, and how a nationwide remedy could reimpose them. This information is highly relevant to how the balance of the equities and the public interest weigh against the terms and scope of Plaintiffs' requested remedy.

Accordingly, proposed *amici* respectfully request that the Court enter the attached proposed order and grant leave to file the attached proposed brief.

Additionally, *amici* respectfully request relief from the requirement of local counsel in Local Civil Rule 83.10(a). *Amici* are not seeking party status or to participate in arguments or

hearings before the Court, and therefore will not need to appear in person in this case. Given the expedited nature of this proceeding, finding local counsel with a residence or principal office located within 50 miles of the courthouse in this division and clearing that counsel through each *amicus*'s retention process has not been possible. This Court has previously granted motions for leave to proceed without local counsel in similar circumstances. *See, e.g., Texas v. United States*, No. 16-cv-54, 2016 WL 9307614 (N.D. Tex. July 28, 2016) (O'Connor, J.). Accordingly, *amici* respectfully request leave to proceed without local counsel so that they may offer their expertise and perspective to the Court.

CONCLUSION

The Court should grant *amici*'s motion for leave to file a brief in this case and to proceed without local counsel.

Dated: November 30, 2022

Respectfully submitted,

/s/ John T. Lewis

John T. Lewis (D.C. Bar No. 1033826,

TX Bar No. 24095074)*

Democracy Forward Foundation

P.O. Box 34553

Washington, DC 20043

(202) 448-9090

jlewis@democracyforward.org

Counsel for Amici Curiae

* application for admission
pro hac vice pending

CERTIFICATE OF CONFERENCE (LOCAL RULE 7.1)

John T. Lewis, counsel for movants, conferred via email with counsel for Plaintiffs and counsel for Defendants. Counsel for Defendants represented that they consent to these motions, and counsel for Plaintiffs represented that they are unopposed.

Dated: November 30, 2022

Respectfully submitted,

/s/ John T. Lewis
John T. Lewis